IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 627 of 1985
With
FIRST APPEAL No. 628 of 1985
With
FIRST APPEAL No. 856 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
RAMJIBHAI JIVRAJBHAI VAGHELA & 4 - Defendant(s)

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Appearance : [First Appeal No. 627 of 1985]
MS BHATT for MR HARDIK C RAWAL for Appellant(s) : 1,MR SN SHELAT for Appellant(s) : 1,
None for Defendant(s) : 1 – 5.

Appearance : [First Appeal No. 628 of 1985]
MS BHATT for MR HARDIK C RAWAL for Appellant(s) : 1,MR SN SHELAT for Appellant(s) : 1,
Notice served for Defendant(s) : 1.

Appearance : [First Appeal No. 856 of 1985]
MR CHINTAN POPAT for MR PRAVIN GONDALIYA for Appellant(s) : 1,
Notice served for Defendant(s) : 1
MS MAYA DESAI for MR MD PANDYA for Defendant (s) : 1

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/12/2006

ORAL COMMON JUDGMENT

1. All these three appeals arise from the common judgment delivered by MACT [Auxi.] Ahmedabad, (Rural) at Narol dated 16th July, 1984 in MAC Case Nos. 148 of 1982 (main) and 515 of 1982. They are heard together and they are now being disposed of by this common judgment.

1.1. First Appeals No. 627 of 1985 and 628 of 1985 have been filed by the Gujarat State Road Transport Corporation to challenge the award that has been passed in favour of the injured applicant of MAC Case No. 148 of 1982, as also for the award passed in MAC Case No. 515 of 1982, which was filed by the owner of the damaged vehicle. First Appeal No. 856 of 1985 has been filed by the owner of the damaged vehicle, namely the truck bearing registration No. GTG 3059 for enhancement of compensation.

2. The accident in question took place on 10th February, 1981 around 10:30 a.m. On that day, the truck was proceeding from Ahmedabad to Amreli. When the truck reached near Vasana S.T., stand on Ahmedabad – Bavla

road, one S.T. Bus bearing registration no. GRT 7631 came from the opposite direction. According to the original claimants, it was driven at an excessive speed and in negligent manner and also on the wrong side of the road. As a result of the same, it collided with the truck and the truck was extensively damaged and the applicant of MAC Case No. 148 of 1982 also received serious injuries. He was sitting in the driver's cabin, behind the driver's seat. The injured claimant was admitted in the hospital at Ahmedabad and he remained under treatment as indoor patient for almost four months. Even subsequently, he had to take follow up treatment for considerable long period. He, therefore, filed MAC Case No. 148 of 1982 to obtain compensation of Rs.1,46,000=00 under the provisions of Motor Vehicles Act [hereinafter referred to as the “Act”]. In the said proceedings, the driver of the truck was joined as opponent no. 3 and owner of the truck as opponent no. 4, who are also respondents no. 3 and 4 in this appeal. The present appellant was joined as opponent no. 1 and driver of the S.T. Bus was joined as opponent no. 2. The insurance company namely, United India Insurance Company of the truck was joined as opponent no. 5 in MAC Case No. 148 of 1982. The driver and owner of the truck filed joint written statement at Exh. 12. They denied that the truck was driven at an excessive speed

and in a rash and negligent manner. According to them, it was the driver of the S.T. Bus who drove the vehicle at an excessive speed and in a rash and negligent manner. As a result of the same, the accident occurred. So far as the appellant is concerned, it filed written statement at Exh. 14. It denied the averments made in the claim petition and also denied that there was any negligence on the part of the driver of the S.T. Bus. The insurance company of the truck filed written statement at Exh. 22-A. It threw the blame on the driver of the S.T. Bus.

3. So far as MAC Case No. 515 of 1982 is concerned, the owner of the truck claimed compensation of Rs.30,000=00 for the damage caused to his vehicle. According to him, damage to the extent of Rs.51,600=00 was caused to the truck. However, from his insurance company he had received a sum of Rs.22,789=00 and for balance amount he had filed the present claim. The claim was restricted to Rs.30,000=00. The appellant, though served did not file written statement, in MAC Case No. 515 of 1982.

4. Before the Tribunal, the parties led evidence, oral as well as documentary. On the basis of the material produced before it, the Tribunal arrived at a conclusion

that so far as the issue of negligence was concerned, it had to be decided in the affirmative, so far as the driver of the S.T. Bus was concerned. In other words, the Tribunal attributed total negligence to the driver of the S.T. Bus belonging to the appellant. So far as the amount of compensation is concerned, the Tribunal determined the compensation payable to injured claimant at Rs.1,24,100=00 together with proportionate costs and interest at the rate of 6% per annum from the date of the application till realization. So far as the claim for damage to the vehicle was concerned, the Tribunal awarded a sum of Rs.2,500=00 by way of compensation also with interest and costs. Hence, this appeal.

5. Ms. Bhatt learned advocate appearing for Mr. Hardik Raval learned advocate for the appellant has submitted that the Tribunal has committed error in holding the driver of the appellant 100% negligent. According to her, it was head-on-collision between the two vehicles and, therefore, the Tribunal ought to have attributed 50% negligence to the driver of the truck. She has submitted that about the point of accident, the road is straight and all the coming vehicles could be seen from considerable distance. When such is the position, the truck driver could have avoided collision to exercise

due care. That has not been done. She has also submitted that the award is on higher side and the compensation under the head of pain, shock and suffering is excessive. She has also challenged the figure arrived at under the head of future loss of income. So far as First Appeal No. 628 of 1985 is concerned, she has submitted that the respondents under the said appeal, namely the owner of the truck was not entitled to receive any compensation. The respondents though served have not appeared before this Court.

6. So far as First Appeal No. 856 of 1985 is concerned, Mr. Chintan Popat learned advocate appearing for Mr. Pravin Gondaliya learned advocate for the appellant has submitted that the Tribunal has erred in awarding Rs.2,500=00 against the claim of Rs.30,000=00 for damage caused to the truck. He has submitted that despite cogent documentary evidence on record placed by the appellant, the Tribunal has not taken that record into consideration. He has also submitted that the amount received by the appellant from his insurance company cannot be deducted because for two reasons, firstly because the appellant has already deducted that amount on his own before filing the claim and the claim has been filed only of Rs.30,000=00 though the damage is to the

extent of more than Rs.50,000=00. Secondly, because it is a collateral benefit and the tort-feasor cannot take advantage of the same. As against that Ms. Maya Desai learned advocate appearing for the respondent i.e., S.T. Corporation has submitted that the Tribunal has rightly not considered the documentary evidence submitted by the appellant since it comprises inflated bills for obtaining more than due compensation. She has also submitted that whatever the genuine damage that was found by the insurance company of the truck has been paid to it by the said insurance company. Therefore, the appellant cannot have double benefit on this count.

7. Having considered the aforesaid submissions of the learned advocates and having perused the record and proceedings, it appears that there is no dispute that the injured claimant was travelling in the truck as claimant and he received injuries in a vehicular accident which occurred on 10th February, 1981. It is also not disputed that there was head-on-collision between the bus belonging to the appellant and the truck belonging to the appellant of First Appeal No. 856 of 1985. It is also not disputed that the injured claimant received serious injuries in this accident. It is also not disputed that the vehicle namely, the truck also got damaged. The

question is that the accident occurred due to negligence on the part of either of the drivers or both. The Tribunal has found that it was the driver of the S.T. Bus, namely respondent no. 2 who was negligent. On account of his negligence and rashness the accident occurred. Ms. Bhatt has submitted that this finding is erroneous. The record shows that the accident took place near Vasna S.T., stand; the truck was proceeding from Ahmedabad Amreli and the bus was approaching speedily from the opposite direction. It also appears that the offending bus was closely following another bus belonging to the appellant. It further appears that the driver of the offending bus tried to overtake the bus going ahead of and in the process it took the vehicle extremely on the wrong side of the road. The damaged truck was being driven on its correct side. Before the driver of the truck could take the vehicle further left to avoid collision, the bus collided with it causing extensive damage to the truck as well as the injuries to the inmates of the truck. The panchnama of the spot of occurrence also shows that the offending bus is extremely on right side. It has caused damage to the truck on its left side. That by itself shows that to overtake the bus going ahead, the driver of the offending vehicle had taken his vehicle totally on just wrong side. In view of

the same, no fault can be found with the driver of the truck and he cannot be held to be negligent. The finding of the Tribunal is, therefore, just and proper and Ms. Bhatt's contention cannot be accepted on this count.

8. So far as the quantum of compensation is concerned, there is evidence of the victim himself. The first evidence shows that at the time of accident he was aged about 26 years. He was unmarried. In the accident he merely received injuries on the stomach and the parts of the body below it. The injuries have been described in the judgment of the Tribunal. The record shows that he had remained in the hospital for a period of almost four months i.e., from 10th February, 1981 to 3rd June, 1981. Dr. Desai has been examined by the injured claimant. His evidence is at Exh. 35. He has stated that the injured was admitted in the hospital with multiple injuries. His body below abdomen was seriously injured. According to the Doctor the victim had the following complaints.

1. Pain in abdomen-colicky.
2. Constipation off and on.
3. Vomiting and nausea.
4. Painful erection of penis.
5. Diarrhea.
6. Recurrent burning micturation.

8.1. He has also recorded his finding, after carrying out clinical examination of the victim.

1. Healed scar of lapratomy on left side
2. Healed scar left lumber region.
3. Healed scar left thigh from groin to knee.
4. Healed scar left gluteal region.
5. Healed scar over penis.
6. Healed scars over forehead.
7. Abdomen was slightly distended with hyper peristalsis.

8.2. It is also stated that there was derangement of abdomen organ to the extent of 50% and it has resulted in chronic disease. He has further stated that on account of scar on the penis his sexual life was likely to be adversely affected. He has opined that the victim would not be able to enjoy the sexual life. He would also experience difficulty in passing urine. Dilation of urethra may cure the patient, as per the opinion of the Doctor, and ease the difficulty to pass urine. However, it will not cause any improvement, so far as the enjoyment of sexual life was concerned. According to the Doctor he would not be in a position to carry out sexual intercourse. The record further shows that on four occasions he was operated upon and catheter was inserted. By placing reliance on the decision rendered by the

Division Bench of this Court in the case of **A.S. Rajara Alias Raja Vamshyam v. Joitaram Rawabhai Patel & Anr., reported in 1982 (2) GLR pg. 29**, which had similar facts, the Division Bench has awarded a sum of Rs.75,000=00 towards pain, shock and suffering. In the opinion of the Tribunal the present case also stand covered by the said judgment since the facts were very similar, the Tribunal, therefore, awarded a sum of Rs.75,000=00 for pain, shock and suffering and lack of amenities of life. Having seen the aforesaid medical evidence and also having carefully considered the sufferings experienced by the claimants, it appears that the award of Rs.75,000=00 could be said to be slightly on higher side, but it is not much, so as to require this Court to interfere with the award. Further on account of the accident, his engagement with the girl got broken. Hence, I do not propose to disturb such finding of the Tribunal.

8.3. So far as loss of future income is concerned, the Tribunal has assessed holding that the loss of earning is to the extent of Rs.210=00 per month and calculating the annual loss of future income at Rs.3,000=00 considering the age of the victim, the Tribunal has rightly applied multiplier of 15 years. This the amount of compensation awarded to the injured

claimant by the Tribunal appears to be absolutely just and proper. On that count also there is no need for this Court to interfere with the award.

8.4. So far as the claim of owner of damaged vehicle is concerned, for damage the owner of the vehicle received approximately Rs.22,000=00 from his insurance company. The present application has been filed only for the balance amount i.e., around Rs.30,000=00. The Tribunal has however, almost rejected the claim on the ground that whatever the damage that was assessed by the insurance company of the truck was proper and that amount has already been awarded. The Tribunal has also held that the insurance company found that the bills presented to it by the claimants were of inflated amount and could not be relied upon. This reasoning of the Tribunal is erroneous. It is settled principle of law that when the collateral benefit that has been received by the concerned parties, the tort-feasor cannot take advantage of the same. The Tribunal found that Rs.13,678=00 could have been awarded to the owner of the damaged vehicle. But since that has been awarded by the insurance company, the owner was not entitled to receive the same. This finding is absolutely erroneous. There are bills produced by the owner of the damaged vehicle. On

the basis of the said bills alone, his insurance company had reimbursed him the expenses incurred for carrying out repairs. Merely because the insurance company had not taken this figure into consideration for some reason or the other, the Tribunal could not have ignored it. When the bills which have been produced on record and properly exhibited, the Tribunal ought to have applied the mind to find out the veracity of the bills. That has not been done. In view of the same, it was not justified in disallowing at least the balance amount i.e. Rs.13,678=00. To that extent the appeal of the owner of the damaged vehicle is required to be allowed and it is hereby ordered that he shall be entitled to recover a sum of Rs.13,678=00 from the S.T. Corporation together with interest and costs as awarded by the Tribunal.

9. In the result, First Appeals no. 627 of 1985 and 628 of 1985 are dismissed with no order as to costs and First Appeal no. 856 of 1985 is partly allowed. The appellant is entitled to recover a sum of Rs.13,678=00 from the S.T. Corporation together with interest and costs as awarded by the Tribunal.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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